

Original

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MAY 26 1992

Federal Communications Commission,
Office of the Secretary

May 26, 1992

92-64

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 92-64
FM Channel 295A
Ocean City, Maryland

Dear Ms. Searcy:

Enclosed for filing on behalf of J. H. Communications is an original and six (6) copies of its "Opposition to Motion to Dismiss" filed by PM Broadcast Engineering, Inc.

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: 
Stephen T. Yelverton
Attorneys for J.H. Communications

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MAY 26 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In Re Applications of:)	MM Docket No. 92-64
)	
WIND 'N SEA FM LIMITED)	File No. BPH-901224ME
PARTNERSHIP)	
)	
J. H. COMMUNICATIONS)	File No. BPH-901226MB
)	
)	
For construction permit for)	
a new FM Station on Channel)	
295A, Ocean City, Maryland)	

To: Administrative Law Judge
Edward Luton

OPPOSITION TO MOTION TO DISMISS

J. H. Communications ("JH"), by its attorneys, pursuant to Section 1.294(c)(3) of the Commission's Rules, hereby submits this "Opposition to Motion to Dismiss." On May 15, 1992, P.M. Broadcast Engineering, Inc. ("PM"), licensee of Station WQMR-FM, Federalsburg, Maryland, filed a "Motion to Dismiss" the application of JH.¹ In opposition to the motion to dismiss, JH submits the following comments.

PM contends that JH's application should be dismissed because it is short-spaced to Station WQMR-FM and it failed to request a waiver of Section 73.207 with respect to that station.

¹The motion to dismiss was also directed against Wind 'N Sea FM Limited Partnership. JH does not oppose that aspect of the motion.

Thus, according to PM, the JH application is defective under Section 73.3566 and under the "hard look" policy.

PM misreads JH's application. A short-spacing waiver was requested. JH requested processing under Section 73.213(c)(1). Such a request is the same as requesting a waiver of Section 73.207 because processing under Section 73.213(c)(1) subsumes a waiver of Section 73.207. See, MM Docket No. 88-375, 4 FCC Rcd. 6375 (1985), 6 FCC Rcd. 3417 (1991).

Moreover, in its application, JH made a general request for waiver of Section 73.207 with respect to short-spaced stations. This waiver request was based on the unavailability of any fully-spaced tower sites. Accordingly, JH's application, as initially filed, complied with the requirements of Section 73.3566 and with the "hard look" policy. Thus, PM's motion should be denied as without any merit.

PM's motion should be granted with respect to Wind. JH raised essentially the same argument in its petition to dismiss the application of Wind, filed May 13, 1992. Wind failed to request a waiver of Section 73.207 and it failed to request processing under Section 73.213(c)(1). Thus, the Wind application patently violates Section 73.3566 and the "hard look" policy. Because Wind failed to request to processing under Section 73.213(c)(1), it is not eligible to take advantage of Commission policy allowing applicants one opportunity to amend to correct any deficiencies in a request for Section 73.213(c)(1) processing. Andrea L. Johnson, 6 FCC Rcd. 7367, 7638, paras. 4-7 (MMB 1991); Salzer v. FCC, 778 F.2d 869 (D.C. Cir. 1985).

WHEREFORE, in view of the foregoing, JH requests that
the Presiding Judge deny the motion to dismiss its application.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: 

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May 26, 1992
8387.005

pmh/styl/sty60

CERTIFICATE OF SERVICE

I, Kate D. Shawcross, a secretary in the law offices of Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this 26th day of May, 1992, I have caused to be hand-delivered a copy of the foregoing "Opposition to Motion to Dismiss" to the following:

The Honorable Edward Luton
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